IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3392 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIKRAMSINH RAMSINH RATHOD

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:

1. Special Civil Application No. 3392 of 1999

MR MUKESH H RATHOD for Petitioner.

MRS VASAVDATTA BHATT for Respondent.

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 06/02/2004

ORAL JUDGEMENT

The petitioner is aggrieved by the judgment and award made by the Labour Court at Bharuch, in Reference (L.C.B.) No. 267 of 1991 dated 11th August, 1998,

dismissing him from the service, has approached this Court under Article 227 of the Constitution of India.

2. The petitioner at the relevant time was working as Conductor at Ankleshwar Depot in Bharuch Division with the respondent. He was dismissed from the service by order dated 7th August, 1990. It transpires that he was served with the chargesheet for committing act of misconduct to the effect that while he was on the route of Dahej to Luvara in Bharuch Division on 14th January, 1989, at Dahej bus-stand, surprise checking was made and it was found that the petitioner had not issued tickets to several passengers who were travelling by that bus, despite having charged the bus fare from them. It also appears that the fare that was collected by the petitioner was of Rs.7.65 paise. In other words, the petitioner was alleged to have misappropriated the said amount. Pursuant to the chargesheet, inquiry was initiated against him and at the end of the same, the Inquiry Officer found him guilty of committing misconduct alleged against him. In view of the said finding, the disciplinary authority issued showcause notice to him calling upon him why he should not be dismissed from the service. Subsequently, vide the aforesaid order, the petitioner was dismissed from the service.

2.1. He raised dispute in view of the order of dismissal, since the said dispute could not be resolved by the Conciliation Officer i.e. the Assistant Labour Commissioner, a Reference was made under the provisions of Section 10 (1) of the Industrial Disputes Act, 1947 vide order dated 28th October,1991.

2.2. At the hearing of the said Reference, both the parties produced relevant evidence and the Labour Court on the strength of the material produced before it ultimately, came to the conclusion that the decision taken by the disciplinary authority dismissing the petitioner from service was proper and it did not warrant any interference. It is this decision of the Labour Court which is now under challenge before this Court.

3. Mr. M.H. Rathod learned advocate appearing for the petitioner has submitted that the judgment of the Labour Court is erroneous inasmuch as there is nothing on record to show that the petitioner had actually misappropriated the said amount. He has further submitted that even if the guilt of the petitioner is established, considering the fact that the amount involved in the incident is very small, the penalty of dismissal from the service is very harsh and it is

required to be redressed. As against that Mrs. Vasavadatta Bhatt learned advocate appearing for the respondent has submitted that the Inquiry Officer on the strength of the material produced before it, had come to the conclusion that the act of misappropriation was duly proved and, therefore, the disciplinary authority was well within its bounds to pass the order of dismissal and more particularly, keeping in view the past conduct of the petitioner. She has further submitted that even the Labour Court has come to that conclusion and, therefore, in the petition under Article 227 of the Constitution of India, no interference is required by this Court.

4. Having carefully gone through the record of the petition and in particular the award of the Labour Court, it appears that the petitioner is alleged to have committed act of misappropriation of Rs.7.65 paise by not issuing tickets to the passengers travelling in his bus, despite having collected the bus fare from them. However, it is undisputed fact that the cash carried by the petitioner at the relevant time was not checked by the concerned officer. It also appears that the statements of those passengers were never recorded. It is only because the tickets were not issued to those passengers, it was alleged that the petitioner had collected money from them, but had not issued tickets. It is submitted by Mrs. Bhatt that according to the Regulations of the respondent, the petitioner was required to issue tickets at the bus stand, since it was stand booking and not road booking. May be that the petitioner had not issued ticket at the bus stand as required under the Regulations and had allowed the passenger to travel without ticket, but that does not mean that he had in fact collected the fare from those passengers and had not issued tickets. It is quite possible that due to inadvertence and little slackness on the part of the petitioner he might not have approached those passengers for collecting fare and issuing tickets. But when the cash-on-hand of the petitioner at the relevant time was not checked, it is difficult to come to the conclusion that he was having excess amount which could be considered to be the amount misappropriated by him. Not only that, no other evidence either in the form of statements of those passengers or in any other form, was made available. Simply because the tickets were not issued at the time when surprise checking was carried out, there is no reason to come to the conclusion that the petitioner had misappropriated the bus fare. It is true that during the course of the inquiry, such finding has been given by the Inquiry Officer and the inquiry has not been challenged by the petitioner in the proceedings

before the Labour Court. However, if the judgment of the Labour Court is perused, the Labour Judge has merely stated that having gone through the record, it appears that the guilt of the petitioner is proved and no interference is called for. Nothing more has been stated. In fact, if the judgment is perused, no evidence whatsoever, is brought on record and this can be termed as case of no evidence. The conclusion therefore drawn by the Labour Court is erroneous and this Court can certainly interfere with the same while exercising power under Article 227 of the Constitution of India. It may be noted here that it is only when the evidence is there on the record, the question of reappreciating the same would arise, which is not permissible under Article 227 of the Constitution of India. However, when the Court finds that there is absolutely no evidence on record, it is difficult to sustain the finding of the Labour Court and this Court under Article 227 of the Constitution of India can certainly interfere with the same and set it aside. The judgment and award passed by the Labour Court is, therefore, ordered to be quashed and set aside.

4.1. So far as the award of the backwages is concerned, it appears from the default card which is produced on record that the petitioner on one occasion was involved in such incident. His past conduct cannot be said to be absolutely clean. Not only that, but there do not appear to be any justifying circumstances on record for award of the backwages.

In view thereof, it is now directed that the respondent shall reinstate the petitioner on his original post with continuity of service and it will not be required to pay any backwages to him. This petition is, therefore, partly allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

[AKSHAY H. MEHTA, J.]

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